SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: CCP

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff, Decision and order

- against - Index No. 509311/2022

BALSAMO, ROSENBLATT & HALL, P.C., A. BALSAMO & ROSENBLATT, P.C. aka BALSAMO & ROSENBLATT, P.C., ROBERT ROSENBLATT, and EDWARD HALL,

Defendants, March 6, 2024

PRESENT: HON. LEON RUCHELSMAN Motion Seq. #10 & #11

The defendants have moved, essentially, seeking to compel the plaintiff to produce certain documents. The plaintiff has cross-moved seeking sanctions. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

This lawsuit was filed alleging the defendant attorneys violated New York Executive Law §63(12), the Federal Debt Collection Practices Act (15 U.S.C. § 1692e), and New York General Business Law §§349 and 601(9). The thrust of these allegations is that the defendants, on behalf of their client landlords, served thousands of rent demands, debt collection notices and commenced eviction proceedings without conducting a meaningful review of all its cases.

On June 1, 2023 the court issued an order that required the

plaintiff to "provide defendants with any and all copies of letters of understanding, stipulations of settlement, consent agreements and/or orders, entered into between the New York State Office of the Attorney General ("OAG") and landlord-tenant attorneys or firms, relating to any matter, on or before June 15, 2023" (see, Interim Order [NYSCEF Doc. No. 159]).

On July 12, 2023 the plaintiff responded and included information about two Assurances of Discontinuance. The plaintiff also noted that they sent fourteen letters to other law firms regarding similar practices that are the subject of this lawsuit and asked the law firms to respond to certain compliance requests. The plaintiff included a response that four law firms had responded confirming they complied with the plaintiff's requests. The plaintiff indicated they would not be disclosing those letters because "disclosure may compromise an ongoing law enforcement effort and therefore are protected under the law enforcement privilege. Further, the four (4) letters contain internal law firm procedures that are confidential and may disclose trade secrets. More fundamentally, these letters were drafted and sent to the OAG by the firms rather than being agreements the OAG has entered into with another party" (see, Letter dated June 12, 2023 [NYSCEF Doc. No. 229]).

The plaintiff has adequately presented sufficient evidence that they have fully complied with the order dated June 1, 2023.

First, there are no longer allegations regarding selective prosecution necessitating the information sought. More importantly, the plaintiff has presented sufficient evidence the information sought is privileged at this time. Of course, the plaintiff maintains an ongoing obligation to provide any of this information when the privilege no longer applies. However, based on the plaintiff's explanations no further production sought is required. Therefore, any motion seeking any sanction due to the plaintiff's failure to provide discovery is denied.

Turning to plaintiff's motion seeking sanctions, 22 NYCRR 130-1.1 states that a state court may award costs including reasonable attorney's fees when a party engages in "frivolous conduct" (id). Conduct is frivolous if "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (id). Indeed, Rule 11 of the Federal Rules of Civil Procedure has been interpreted to impose sanctions for similar grounds as NYCRR 130-1.1(c)(1). Thus, in Morley v. Ciba-Geigy Corp., 66 F3d 21 [2d Cir 1995] the court explained that a frivolous pleading or legal position is one where considering an "objective standard of reasonableness, it is clear ... that there

is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands" (id).

The plaintiff's basis seeking sanctions is the fact the defendants have asserted, in various motions and affirmations, statements that are false. However, the statute requires "material" factual statements that are false. Virtually all of the alleged false statements are not material to this lawsuit at all and were not material to any of the arguments presented. While all counsel must endeavor to present cogent, compelling and honest arguments, any misstatements allegedly made by defendants in this case were simply not material. Moreover, these tangential issues only serve to distract from the serious issues raised in this lawsuit and all parties should be focused upon those issues instead.

Therefore, the motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: March 6, 2024
Brooklyn, N.Y.

Hon. Leon Ruchelsman
JSC